IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION No. 47 of 1999

For Approval and Signature:

HONOURABLE MR.JUSTICE P.B.MAJMUDAR

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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KIRITSINH DHARAMVIRSINH

Versus

KALUBHAI SHARDULBHAI AND OTHERS

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Appearance :
MR BJ JADEJA for the petitioner [not present]
MR AMRISH PANDYA for DR BHATT for Opponents No.1 - 2.
MS PB SHETH, ASST. GOVT. PLEADER for Opponent No. 3

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CORAM : HONOURABLE MR.JUSTICE P.B.MAJMUDAR

Date : 07/03/2006

ORAL JUDGMENT

By filing this Revision Application, the petitioner, original plaintiff ,

has challenged order dated 15.10.1998 passed by Deputy Collector, Palitana in Revision Application No.2 of 1997-98. By the said order, the Deputy Collector, Palitana has allowed the Revision Application filed by the original defendants-respondents No.1 and 2 herein.

The proceedings arises out of the Mamlatdars' Courts Act, 1906 [hereinafter referred to as the Act]. The petitioner herein instituted proceedings before the Mamlatdar under the Act being Case No. 1 of 1995-96. It was the case of the petitioner herein that he is holding lands bearing survey No. 164, 172 and 173 at village Langala and respondents No.1 and 2 are holding lands bearing survey No. 165, 166, 174 and 175 at the same village. It was the case of the petitioner that there is a 'Nahera' [water-course] flowing through the lands held by the respondents and the petitioner and even his predecessor in title were accessing survey Nos. 164, 172 and 173 through the water course. However, on account of some dispute, the respondents closed the way through the water-course. The petitioner therefore filed Suit No.1/95-96 before the Mamlatdar under section 5 of the Act contending that the water-course being government land, the petitioner has right of way to go to his lands through the water course. The Mamlatdar passed an order on 26.7.1996 holding that the petitioner has right of way through the water-course to go to his lands. The respondents No. 1 and 2 preferred Revision Application No. 1 of 1996-97 before the Deputy Collector, Palitana under section 23 of the Act. On 23.12.1996, the Deputy Collector remanded the matter to the Mamlatdar for deciding the issues raised by him in his order. Upon the matter being so remanded, the Mamlatdar held further inquiry and passed an order on 5.9.1997 to the effect that the petitioner has right of way through the water course.

The Mamlatdar found that the respondents have not produced any evidence about the actual measurement of their lands and the respondents have encroached the government water-course land and cultivated the said land. Thus, the Mamlatdar by his order dated 5.9.1997 declared that the petitioner herein has a right of way through the water-course for going to his lands. Against the said order, the respondents No. 1 and 2 again preferred Revision Application No. 2 of 1997-98 under section 23 of the Act challenging the order dated 5.9.1997 passed by the Mamlatdar. The Deputy Collector, Palitana heard the Revision Application and allowed it by his judgment and order dated 15.10.1998. The Deputy Collector found that the plaintiff has failed to prove that he has got right of way through the disputed water course. (It appears, through mistake, the Deputy Collector in his order has described the petitioner herein as “prati vadi” [defendant] The Deputy Collector found that the petitioner herein has not lead any evidence to prove that he has right of way through the disputed land. The Deputy Collector also found that there is no evidence by way of District Land Revenue Officer's measurement record whether the disputed land was 'Nahera' [water course] land or ownership land. The Deputy Collector also found that there is another way available to the petitioner to reach his land. On these grounds, the Deputy Collector, by his order dated 15.10.1998 allowed the Revision filed by the respondents herein. Being aggrieved by the said judgment and order, the petitioner-original plaintiff has preferred this Revision Application under section 115 of the Civil Procedure Code.

It is required to be noted that in this Revision Application, this Court is required to see whether the order passed by the Deputy Collector

suffers from any jurisdictional error. It is also required to be noted that so far as the power of revision under section 23 of the Act available with the Deputy Collector is much wider than the power of revision available to this Court under section 115, CPC. Section 23 of the Act reads as under:-

> "23.(1). There shall be no appeal from any order passed by a Mamlatdar under this Act.
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> (2). But the Collector may call for and examine the record of any suit under this Act, and if he considers that any proceedings, finding or order in such suit is illegal or improper, may, after due notice to the parties, pass such order thereon, not inconsistent with this Act, as he thinks fit.
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> (2A). The Collector may delegate the powers conferred on him by this section to any Assistant Collector or Deputy Collector subordinate to him.
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> (3). Where the Collector, Assistant Collector or Deputy Collector takes any proceedings under this Act he shall be deemed to be a Court under this Act."

The Deputy Collector has found that the petitioner herein has not produced any evidence to establish his right of way. Apart from that, so far as the right for passing through government land is concerned, that cannot be a subject matter of the proceedings under the Act. Even if it is found that the respondents No. 1 and 2 have encroached Government land, it is for the Government to take appropriate proceedings under the Bombay Land Revenue Code.

Mr. Amrish Pandya, learned advocate for the opponents No.1 and

2 vehemently submitted that under section 5 of the Act, the Mamlatdar is only empowered to to remove or cause to be removed any impediment to the natural flow in a defined channel land or otherwise of any surface water and to give immediate possession of any lands or premises used for agriculture etc. or to restore the use of water from any well etc. to any person who has been dispossessed or deprived thereof otherwise than by due course of law. He further submitted that under section 5, the Mamlatdar has also got power to issue injunction to a person causing such impediment. He further submitted that it is not open for the Mamlatdar to make a declaration that the petitioner has got right of way and has not passed any order or direction for removal of impediments or obstructions as provided under section 5 of the Act. The Deputy Collector, after considering the provisions of the Act, has set aside the order passed by the Mamlatdar.

In my view, in exercise of its very limited jurisdiction under section 115, CPC, this Court is not required to interfere with the order passed by the Deputy Collector. It cannot be said that the Deputy Collector has committed any error of jurisdiction. Ultimately, the parties can always resort to civil proceedings for getting their rights declared by filing appropriate civil suit. So far as the proceedings under the Act is concerned, it is summary proceedings in nature, and the Deputy Collector has found that the petitioner has failed to prove his case. Considering the facts and circumstances of the case and the fact that even the Mamlatdar has also not exercised his power properly and has merely given a declaration, no interference is called for and this application is required to be rejected. It is required to be noted that the object of granting order under section 5 of the Act is to see that possession is

restored in favour of the plaintiff if cause of action arose within six months and to remove obstruction in the right of way, if alleged to have been made by the defendant by which an agriculturist may not be allowed to pass through a field or land. In the instant case, the Mamlatdar has merely given a declaration without giving any further direction for removal of obstruction or impediment, if any. In the operative part of the order, at page 24 of the compilation, merely a declaration is given by the Mamlatdar. Such type of an order, even otherwise, is not in consonance with the provisions of section 5 of the Act. Considering this aspect of the matter also, the order passed by the Deputy Collector is not required to be interfered by this Court in its limited jurisdiction even if it is found that the Deputy Collector ma not have given satisfactory reasons while deciding the Revision Application. Even if there is an error of law, the same cannot be corrected by this Court in exercise of its jurisdiction under section 115, CPC. Considering all these aspects, this Revision is required to be rejected, and is hereby rejected. Rule is discharged. Interim Relief stands vacated. No order as to costs.

[P. B. MAJMUDAR, J.]

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